



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2012-0766; FRL -9808-4]

**Approval and Promulgation of Air Quality Implementation Plans; Texas; Approval of
Texas Low Emission Diesel Fuel Rule Revisions**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is granting direct final approval of a revision to the Texas State Implementation Plan (SIP) concerning the Texas Low Emission Diesel fuel rules. The revisions clarify existing definitions and provisions, revise the approval procedures for alternative diesel fuel formulations, add new registration requirements, and update the rule to reflect the current program status because the rule is now fully implemented. This SIP revision meets statutory requirements.

DATES: This rule is effective on **[Insert date 60 days from date of publication in the Federal Register]** without further notice, unless EPA receives relevant adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2012-0766, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
 - EPA Region 6 “Contact Us” web site: *http://epa.gov/region6/r6coment.htm*. Please click on “6PD” (Multimedia) and select “Air” before submitting comments.
 - E-mail: Mr. Guy Donaldson at *donaldson.guy@epa.gov*. Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
 - Fax: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.
 - Mail: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
 - Hand or Courier Delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8:00am and 4:00pm weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.
- Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2012-0766. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that

you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov index*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30am and 4:30pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page

fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building E, Austin, Texas 78753, and at the commission's Web site at http://www/tceq.texas.gov/nav/rules/propose_adopt.html.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Rennie, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7367; fax number 214-665-7263; e-mail address rennie.sandra@epa.gov.

SUPPLEMENTARY INFORMATION

Throughout this document, whenever “we” “us” or “our” is used, we mean the EPA.

Outline

- I. Background
- II. Analysis of the State's Submittal
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background

The Texas Low Emission Diesel (TxLED) fuel program was initially approved by EPA on November 14, 2001 (66 FR 57196). It was revised on April 6, 2005 (70 FR 17321), October 6, 2005 (70 FR 58325), and October 24, 2008 (73 FR 63378). The TxLED fuel is similar to CARB (California Air Resources Board) diesel and is required for use by on-highway vehicles and non-road equipment (including marine vessels) in 110 counties in eastern and central Texas. Use of this boutique diesel fuel reduces NO_x emissions.

Texas submitted a revision to the TxLED rules on September 19, 2012. The rulemaking revises definitions; establishes new designated alternative limits for TxLED fuel properties; removes expired registration requirements and establishes new registration requirements for identifying production and import facilities; revises approval procedures for alternative diesel fuel formulations; specifies that the approvals of all additive-based alternative diesel fuel formulations will be subject to revocation if the composition of the additive is found to be altered; allows all alternative diesel formulations approved by the TCEQ prior to April 1, 2012, to remain in effect; revises reporting requirements to include production and import facility data; requires alternative emission reduction plans using the Unified Model to determine compliance each calendar quarter; removes expired early gasoline sulfur reduction credits provisions; and makes other clarifying changes as needed for accuracy and consistency.

II. Analysis of the State's Submittal

We compared the rule revisions for stringency against the rule language in the approved SIP. Revisions are made to the following sections: §114.6, Definitions; §114.312, Low Emission Diesel Standards; §114.313, Designated Alternative Limits; §114.314, Registration of Diesel Producers and Importers; §114.315, Approved Test Methods; §114.316, Monitoring,

Recordkeeping, and Reporting Requirements; §114.317 Exemptions to Low Emission Diesel Requirements; §114.318, Alternative Emission Reduction Plan; §114.319, Affected Counties and Compliance Dates.

We found that the revisions to the rule did not compromise the integrity of the approved SIP. In some cases, the revisions made the rule more stringent than the approved SIP. See the Technical Support Document that accompanies this action for a detailed analysis of the revisions.

III. Final Action

Pursuant to section 110 of the Act, EPA is approving revisions to the TxLED rule that were submitted on September 19, 2012. We evaluated the State's submittal and determined that it meets the applicable requirements of the Clean Air Act (CAA) section 110. Approval of this submittal will not result in any increase in ozone concentration levels. In accordance with CAA section 110(l), these revisions will not interfere with attainment of the National Ambient Air Quality Standards (NAAQS), Rate of Progress, reasonable further progress, or any other applicable requirement of the CAA.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received.

This rule will be effective on **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication in the Federal Register]** without further notice unless we receive adverse comment by **[FEDERAL REGISTER OFFICE: insert date 30 days from date of publication]**

in the Federal Register. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United

States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 5, 2013.

Ron Curry,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. The table in § 52.2270(c) entitled “EPA Approved Regulations in the Texas SIP” is amended under “Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles” by revising the entries for Section 114.6 and for Sections 114.312 through 114.319 to read as follows:

§ 52.2270 Identification of plan.

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(c) * * *

EPA Approved Regulations in the Texas SIP

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * *	* * *			
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
Subchapter A--Definitions				
* * *	* * *			
Section 114.6	Low Emission Fuel Definitions.	8/22/12	[Insert date of FR publication], [Insert FR page number where document begins]	
* * *	* * *			
Subchapter H—Low Emission Fuels				
* * *	* * *			
Division 2: Low Emission Diesel				
Section 114.312	Low Emission Diesel Standards.	8/22/12	[Insert date of FR publication], [Insert FR page number where document begins]	

Section 114.313	Designated Alternative Limits.	8/22/12	[Insert date of FR publication], [Insert FR page number where document begins]	
Section 114.314	Registration of Diesel Producers and Importers.	8/22/12	[Insert date of FR publication], [Insert FR page number where document begins]	
Section 114.315	Approved Test Methods.	8/22/12	[Insert date of FR publication], [Insert FR page number where document begins]	
Section 114.316	Monitoring, Recordkeeping, and Reporting Requirements.	8/22/12	[Insert date of FR publication], [Insert FR page number where document begins]	
Section 114.317	Exemptions to Low Emission Diesel Requirements.	8/22/12	[Insert date of FR publication], [Insert FR page number where document begins]	
Section 114.318	Alternative Emission Reduction Plan.	8/22/12	[Insert date of FR publication], [Insert FR page number where document begins]	
Section 114.319	Affected Counties and Compliance Dates.	8/22/12	[Insert date of FR publication], [Insert FR page number where document begins]	
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